



NCN: [2023] UKFTT 1061 (GRC)

Case Reference: PEN/2023/0156

**First-tier Tribunal
General Regulatory Chamber
Pensions Regulation**

Heard by: Judge in Chambers on the papers

Decision given on: 20th December 2023

Before

HHJ DAVID DIXON

Between

COVERDALE BARCLAY LTD

and

THE PENSIONS REGULATOR

Appellant

Respondent

Decision: The reference is dismissed and the matter is remitted to the Regulator. The Penalty Notice is confirmed, without any further directions.

REASONS

1. By this reference Taunton Property Centre Ltd (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 7th June 2023.
2. The FPN was issued under s. 40 of the Pensions Act 2008. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of a compliance notice (CN) issued on 11th April 2023. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 22nd May 2023.
3. The Employer referred the matter to the Tribunal on 3rd July 2023.
4. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered all the evidence and submissions made by both parties.

The Appeal

5. Under s. 44 of the 2008 Act, a person who has been issued with a FPN may make a reference to the Tribunal provided an application for review has first been made to the Regulator. The role of the Tribunal is to make its own decision on the appropriate action for the Regulator to take, taking into account the evidence before it. The Tribunal may confirm, vary or revoke a FPN and when it reaches a decision must remit the matter to the Regulator with such directions (if any) required to give effect to its decision.
6. The Employer’s Notice of Appeal indicates that they never received the CN and as such didn’t know they needed to act upon anything. They suggest that the documents look like they may have gone to their accountant, but weren’t received by them. They seek the financial penalty be waived as compliance followed as soon as they were aware of the issues.
7. The Regulator’s Response indicates that the Appellant failed to complete the declaration as required. The Regulator indicates it is a legal requirement to file the redeclaration and varies warnings of the same are given to employers. A CN was issued to the registered address of the company, and then a FPN followed. A review was sought after this document arrived, and that subsequently took place, where the FPN was confirmed. The Regulator indicates that the FPN was properly imposed, after the CN was sent, and not complied with. The Regulator avers that the CN was sent to the registered address and therefore the relevant rules have been complied with.
8. The Regulator relies upon the presumptions of service and upon the aforesaid as proof the CN was properly served. They assert no evidence has been offered to show that there were issues with the postal system and therefore the presumptions stand.
9. The Tribunal considered a bundle of 96 pages.

Submissions

10. The Appellant seeks to have the notice overturned on the basis that CN was never received. It argues that it has also complied and by inference something must have gone wrong. They assert full compliance upon notification of the problem.
11. The Regulator responds that there is no excuse for non-compliance, let alone a reasonable one. It is the Employer's responsibility to meet the legal requirements, and here the Appellant has not provided evidence to reverse the imposition of the Notice.

Conclusion

12. I find that the Appellant has failed to provide any proper basis for not complying with the CN. The responsibility for completing the declaration rests with the employer and that includes ensuring that all appropriate details are provided. The purpose of requiring employers to declare compliance is to ensure that appropriate steps have been taken. It is the employer's obligation to meet the regulations not the Regulator to ensure the same.
13. The Appellant argues that it never received the relevant indications that it must file a declaration by a CN. The Regulator has provided details of the documents supplied to the Appellant, which were sent to the company registered address. The Appellant accepts receiving the FPN as it was acted upon. The Regulator relies upon the presumption of service that indicates in basic terms that if post is properly addressed and sent, then it is deemed to have arrived unless and until cogent evidence is provided to doubt the same.
14. In accordance with s7 Interpretation Act 1978 presumptions, by sending letters and emails to the Companies Registered address the Regulator had met its obligations and more. The further presumptions within the Employers Duties (Registration and Compliance) Regulations 2010 (SI 2010/5), particularly Regulation 15, further support the Regulator's position.
15. A simple denial of receipt is not enough to displace the presumption. Here there is only a denial of receipt nothing else to suggest the presumption is inappropriate. It is telling that the document that levelled a penalty was received and acted upon. The receipt of the FPN supports the presumption, nothing detracts and therefore I find that the CN was served.
16. The Appellant did not file a declaration of compliance when required, the FPN that followed was perfectly proper and I can see no basis for finding to the contrary. The appeal against the penalty itself is without merit.
17. In all the circumstances I am driven to the view the appeal has no merit and I remit the matter to the Regulator, upholding the Fixed Penalty Notice.
18. No further directions are required.

Signed: HHJ David Dixon

DATE: 20th December 2023